

**REMARKS**

This Amendment is responsive to the Office Action mailed on April 7, 2004. Claims 1-23 are pending in the application. Claim 20 has been amended to correct an obvious error. No new matter has been introduced as a result of this amendment.

The Examiner has rejected Claims 1-19 and 23 under 35 U.S.C. 102(b) as being anticipated by Merz et al. (U.S. Patent No. 4,932,955). This rejection is respectfully traversed.

The Examiner has objected to Claims 20-22 as being dependent upon a rejected base claim, but indicated these claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The indication of allowable subject matter is appreciated.

**Discussion of Prior Art**

An anticipation rejection requires that each and every element of the claimed invention as set forth in the claim be provided in the cited reference. See *Akamai Technologies Inc. v. Cable & Wireless Internet Services Inc.*, 68 USPQ2d 1186 (CA FC 2003), and cases cited therein.

The Merz et al. reference fails to disclose each and every element of Applicants' claimed invention. In particular, Merz et al. discloses a clip that not only prevents tissue from becoming enmeshed in the clamping spring, but also prevents galling between the spring and the legs of the clip. The Merz

et al. design encompasses a hollow, cylindrical hub, which includes first and second hub sections. The hub sections are joined by a pin that allows independent rotation of the hub sections about the pin. (Merz et al. at col. 1, lines 40-46). Specifically, a pin 114, which is disposed within the hole 113 and is riveted in position, joins the hub sections 101a, 101b but leaves them free to rotate independently about the pin 114. The hub sections 101a, 101b are joined with their respective rims 110a, 110b and bushings 112a, 112b abutting, defining an annular space 115 within the hub 101. The coil spring 105 is disposed within this annular space 115 with the coils 111 of the spring 105 mounted about the cylindrical bushings 112a, 112b. (Merz et al. at col. 2, lines 57-66). The coil spring 105 winds or unwinds as the hub sections 101a, 101b rotate in opposite directions about the pin 114. (Merz et al. at col. 3, lines 18-23). With the initial members 121a, 121b acting as levers rotating the hub sections 101a, 101b in opposite directions about the pin 114, the clamping surfaces 104a, 104b are spread apart. As the hub sections 101a, 101b rotate in opposite directions about the pin 114, the rims 110a, 110b of the hub sections 101a, 101b act against the upturned ends 120a, 120b of the spring 105, winding the spring 105 tighter. (Merz et al. at col. 4, lines 60-67).

With reference to FIGS. 2, 7 and in particular FIG. 3 and accompanying description of Merz et al., a person skilled in the art will instantly realize that the shaft of the Merz et al. reference device is formed by pin 114 and not by coil spring 105. For example, the function of the coil spring 105 is explained in Merz et al. at column 2, lines 33-34. The coil spring 105 is provided for biasing the clamping surfaces of the

aneurysm clip together. The pin 114 joins the hub sections of the clip but leaves the hubs free to rotate independently about the pin 114. (Merz et al. at col. 2, lines 57-60). Moreover, as described in Merz et al. at col. 2, lines 63-66, the coil spring is disposed within the annular space with the coils of the spring mounted about the cylindrical bushings 112a, 112b. A hole 113 extends coaxially through the bushing 112a, 112b within which the pin 114 is disposed. Consequently, the shaft of the aneurysm clip of Merz et al. uses a pin as a shaft for the two-part clip, which also serves for joining the hub sections of the Merz et al. clip.

In contrast, Applicants' claimed invention provides for a shaft that is formed by the tension element (e.g., spring) itself. The tension element of Applicants' claimed invention has two functions. First, the tension element serves as a biasing element for biasing the clamping surfaces of the clip together. Second, the tension element serves as a shaft for defining a pivotal movement of both clip portions relative to each other. The claimed clip construction is advantageous because there is no necessity for an additional element that only provides for a shaft function (e.g., pin 114 of Merz et al.). Additionally, clips referred to in Applicants' claimed invention (as well as in the device of Merz et al.) are usually small. Applicants' claimed invention facilitates the assembly of the clip, and reduces the cost of manufacturing the clip since only three clip parts are necessary, namely the two hub sections and the tension element having two functions.

Accordingly, Applicants' claims are not anticipated (or rendered obvious) by the prior art of record. The prior art fails to teach or suggest a surgical clip structure as claimed

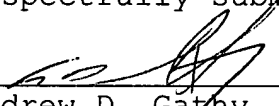
wherein, *inter alia*, "...the shaft is formed by the tension element."

Further remarks regarding the asserted relationship between Applicants' claims and the prior art are not deemed necessary, in view of the foregoing discussion. Applicants' silence as to any of the Examiner's comments is not indicative of acquiescence to the stated grounds of rejection.

Conclusion

In view of the above, entry of the present amendment and reconsideration and allowance of each of the claims is respectfully requested. If there are any remaining issues that need to be addressed in order to place this application into condition for allowance, the Examiner is requested to telephone Applicant's undersigned attorney.

Respectfully submitted,



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